

4230

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE TRANSPORTATION REGULATION BOARD

Application of Burlington Northern
Railroad, 176 East Fifth Street,
St. Paul, MN 55101 for Authority
to Terminate Agency Service at
Crookston, MN and to Transfer
Service for Crookston, MN to
Dilworth, MN and Grand Forks,
ND Centralized Agencies.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED ORDER

The above-entitled matter came on for hearing in Crookston, Minnesota
on
January 8, 1991, at 9:00 a.m. before Bruce D. Campbell, Administrative
Law
Judge from the Minnesota Office of Administrative Hearings.

Appearances: Alphonse J. Cocchiarella, Spence, Ricke & Thurmer,
Attorneys
at Law, Suite 600, Degree of Honor Building, 325 Cedar Street, St.
Paul,
Minnesota 55101, appeared on behalf of the Petitioner, Burlington
Northern
Railroad (Burlington Northern, BN or Railroad); Steven B. Mercil, CDA
Director,
102 North Broadway, P.O. Box 492, Crookston, Minnesota, appeared on behalf of
the Crookston Development Authority; Robert J. Anderson, 832 Lumber Exchange
Building, Minneapolis, Minnesota 55402, appeared on behalf of the
United
Transportation Union; and Thomas J. Dwyer, State Legislative Director, 3948
Central Avenue Northeast, Suite 203, Columbia Heights, Minnesota 55421,
appeared on behalf of the Transportation Communications International Union.

The record closed on January 25, 1991, the date established by the
Administrative Law Judge for the receipt of post-hearing memoranda.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and
the
Rules of Practice of the Public Utilities Commission, as applicable to
the
Transportation Regulation Board, and the Rules of the Office of
Administrative
Hearings, exceptions to this Report, if any, by any party adversely affected
must be filed within 20 days of the mailing date hereof with the
Transportation
Regulation Board, Minnesota Administrative Truck Center, 254 Livestock
Exchange

Building, 100 Stockyards Road, South St. Paul, Minnesota 55075.

Exceptions

must be specific and stated and numbered separately. Proposed Findings of

Fact, Conclusions and Order should be included, and copies thereof shall be

served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all

parties adversely affected by the Administrative Law Judge's recommendation who

request such argument. Such request must accompany the filed exceptions or

reply, and an original and five copies of each document must be filed with the

Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing

exceptions as set forth above, or after oral argument, if such is requested and

had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final Order.

STATEMENT-OF-ISSUES

The hearing was held to determine whether the Burlington Northern Railroad, pursuant to Minn. Stat. 219.85 (1990), should be authorized to terminate its base rail agency service at Crookston, Minnesota and to transfer service for Crookston to its Dilworth, Minnesota and Grand Forks, North Dakota centralized agencies and to remove the station building at Crookston.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. By Petition dated October 18, 1990, and filed with the Transportation Regulation Board on October 19, 1990, the Railroad requested authority to terminate its base agency service at Crookston, Minnesota and to service shippers in the Crookston area through the centralized agencies at Grand Forks, North Dakota and Dilworth, Minnesota. The 56 stations currently serviced by the Crookston station are listed at pages 1 and 2 of the Petition. All agency services to the Crookston area and the stations currently serviced from the Crookston station would be provided from the Grand Forks, North Dakota centralized agency, except for service to the stations of Perley, Georgetown, Kragness, Felton and Averill. Responsibility for providing service to these stations would be transferred to the Dilworth, Minnesota centralized agency. The Railroad also proposes to provide service to the Crookston area through a traveling representative located at the Grand Forks centralized agency whose primary service area would include the stations currently serviced by the Crookston station, except those stations transferred to Dilworth.

2. By order dated December 7, 1990, the Transportation Regulation Board directed that a hearing on the Petition be held in Crookston, Minnesota on January 8 and 9, 1991. A copy of the Notice of Hearing was mailed to all potentially affected and interested persons and was published in the weekly calendar of the Transportation Regulation Board for a period of at least 30 days prior to the hearing. The matter was referred to the Minnesota Office of Administrative Hearings for the purposes of conducting a contested case hearing and, based on the evidence received at such hearing, making a recommendation to

the Transportation Regulation Board on the Petition.

3. Although notification of the hearing was mailed to all potentially affected shippers and government officials, no person filed a Notice of Appearance prior to the hearing. At the hearing, the Crookston Development Authority sought leave to intervene as a party in opposition to the realignment of agency service. Over the objection of the Railroad, the Crookston Development Authority was made a party to the proceedings. Both the United Transportation Union and the Transportation Communications International Union appeared at the hearing, provided testimony and cross-examined witnesses. At their request, however, they were not made formal parties. Their participation as interested entities is authorized by Minn. Rules pt. 1400.7150 (1989). No Railroad shipper requested to intervene in opposition to the Petition. A

number of shippers did, however, appear as public witnesses and state their desire to maintain the same quality of service currently received through the Crookston agency station.

4. Burlington Northern Railroad Company operates various railroad lines in the State of Minnesota. The northwestern portion of its system runs generally in an east and west direction through Minnesota. A map of the Petitioner's railroad lines in northwestern Minnesota and the respective areas served by the Grand Forks central agency, the Crookston central agency and the Dilworth central agency is contained in BN Ex. A. Burlington Northern currently maintains a centralized agency at Crookston, Minnesota, which services the 56 stations listed on page I of the Petition. Crookston is located approximately 27 miles east of Grand Forks, North Dakota. Dilworth is located approximately 70 miles southwest of Crookston.

5. In the fall of 1986, both train service and car supply for the stations of Perley, Georgetown, Kragness, Felton and Averill were changed to originate at Dilworth rather than at Crookston, Minnesota. The functions of car ordering, billing, releasing, and demurrage remained at Crookston. Currently, customers at the locations indicated must contact the Crookston station for Railroad business. The Crookston station must then recontact Dilworth to accomplish the customer's business. Contacts with the Grand Forks station must also be made from Crookston. The operational change in car supply has caused administrative problems for Railroad customers located in these five towns. The necessary relay of information between Crookston and Dilworth could result in service delays for shippers. The Dilworth central agency is staffed 24 hours per day, seven days per week. The Dilworth station has ten fulltime first-shift employees, four second-shift employees and one third-shift employee who provide 24-hour service to customers. Dilworth also has a toll-free Minnesota and North Dakota telephone line available for Railroad customers. The Crookston agency is currently staffed only 17 hours per day, seven days a week.

6. The Dilworth agency will not be required to add additional personnel to provide centralized agency service to the towns of Perley, Georgetown,

Kragness, Felton and Averill. Perley, Georgetown, Kragness, Felton and Averill account for only a small portion of the traffic currently handled by the Crookston centralized agency. In 1988, the traffic was as follows:
Perley - 92 cars forwarded; Georgetown - 291 cars forwarded, five cars received; Kragness - 191 cars forwarded; Felton - 183 cars forwarded, nine cars received; and Averill - 29 cars forwarded, one car received. BN Ex. M. During 1988, the Crookston agency station and its blind sidings forwarded, received and interchanged a total of 18,129 cars. BN Ex. M, p. 5. In 1989, the traffic was as follows: Perley - 149 cars forwarded and one car received; Georgetown - 245 cars forwarded and four cars received; Kragness - 147 cars forwarded; Felton - 141 cars forwarded and 16 cars received; and Averill - no cars forwarded or received. BN Ex. M. During 1989, the Crookston agency station and its blind sidings forwarded, received and interchanged a total of 18,164 cars. BN Ex. M, p. 5. Between January and September of 1990, the traffic was as follows:
Perley - 36 cars forwarded; Georgetown 91 cars forwarded, four cars received; Kragness - 124 cars forwarded; Felton 56 cars forwarded and five cars received; Averill - no cars forwarded or received. BN Ex. M. Between January and September of 1990, the Crookston agency station and its blind sidings forwarded, received and interchanged a total of 13,326 cars. BN Ex. M, p. 5.

7. The Dilworth centralized agency currently employs a traveling agent who will be available for personal contact with customers in the five locations proposed to be shifted to the Dilworth centralized agency.

8. The five stations listed in Finding 5, supra, are much closer geographically to Dilworth than they are to Crookston. Set, BN Ex. A.

9. The shippers in the five locations stated in Finding 5, supra, were contacted in 1988 and again in 1990 regarding the proposed transfer of centralized agency responsibility from Crookston to Dilworth. No shipper opposed the transfer. No shipper in the five locations stated in Finding 5, supra, testified in opposition to the proposed transfer of centralized agency responsibility for the five locations from Crookston to Dilworth, Minnesota.

10. The Burlington Northern central agency at Crookston, Minnesota services the 56 stations noted in the Petition. see, Finding 1, supra. The Crookston agency is staffed 17 hours a day, seven days a week by a total of four agent employees. There is no passenger service at Crookston. No less than carload service is provided to shippers and no telegraph service is available at Crookston. Shippers who have recently conducted some Railroad business through the Crookston station are listed in BN Ex. B. Except for one local train crew, all car supplies and trains for the Crookston station originate from the Grand Forks centralized agency. No demurrage or data entry calculations are made at Crookston. All Railroad data concerning the Crookston station is stored in the BN computer at Grand Forks. When a customer currently has contact with the Crookston station, the information is received at Crookston and sent by fax machine to Grand Forks. Crookston is, essentially, only a relay point, transmitting information to the Grand Forks central agency for processing and action. Under the Petition, a shipper would contact the Grand Forks station directly by a toll-free call, rather than by calling the Crookston station which would relay the contact to Grand Forks. No change in the number of cars, train service or ability to have a face-to-face contact with a BN agent is contemplated by the Petition.

11. Three of the four agents at the Crookston station have more than 30 years seniority as Railroad employees. The fourth agent has at least 20 years of seniority. It is anticipated that one of the four Railroad employees at the Crookston station will retire in February of 1991. Of the remaining three Crookston agents, two live in Crookston and one lives in Gary, Minnesota, a

town approximately 35 miles south of Crookston, towards Dilworth. The seniority of the Railroad employees at Crookston would allow them to bid on and obtain positions at either the Dilworth or Grand Forks central agencies. Moreover, they would have first opportunity to obtain the two additional positions at the Grand Forks, North Dakota agency to be created if the Petition is granted. Under existing union agreements, the Railroad employees displaced at the Crookston station have guaranteed employment with the Railroad at a specified salary level. If an employee displaced by the Petition bid in on a job at the Grand Forks or Dilworth stations, he would have a protected period of approximately one year during which he could not be displaced by a Railroad employee with higher seniority. After the one-year period, if an individual with higher seniority bid in on his position, he would be required to displace either a lower seniority employee at the Dilworth or Grand Forks stations, or bid in on a Railroad job at a different BN station.

12. The agency building at Crookston, though historic, is in a current state of disrepair. toy, BN Ex. F - L. The heating plant at the station is

malfunctioning and requires replacement. The station's working space is minimal and its operational equipment antiquated. The Railroad currently only uses a small portion of the depot building to provide agency service and that service could be provided equally from any location. If the Petition is granted, the Railroad will use the depot building for cold storage for a period of at least a year. During that period, BN has agreed to negotiate with the City of Crookston, its Development Authority or other potential owners who will preserve and refurbish the building.

13. The Crookston area is currently serviced by a local train crew. The train crew usually consists of an engineer, a conductor and a brakeman. The crew receives its operational instructions and lists at the Crookston station. The operational orders and lists, however, are generated by the Grand Forks station trainmaster. The crew first services the American Crystal Sugar refining plant in Crookston. That plant requires the spotting of at least 20 cars per day. After servicing the sugar refining plant in Crookston, the local crew goes along the branch lines according to a schedule.

14. A transfer of agency service to Grand Forks would not affect, materially, the service provided by the local operating crew. Currently, the information for the lists and instructions to the local crew originates at Grand Forks. Under the Petition, the instructions and lists would be received by the conductor of the local crew at Crookston through a facsimile machine. That could be accomplished without having agency service at Crookston. The maintenance of a local crew in Crookston is a function of the level of shipper activity, and not the presence of local agency service at Crookston.

15. The Crookston agents have no particular responsibility for conducting Railroad equipment safety inspections. The agents have no distinct responsibility for hazardous material inspections or the placarding of cars carrying such materials. The responsibility for placarding cars carrying hazardous materials is primarily that of the shipper. The train crew, then, inspects the cars for proper placarding. Responsibility for maintenance and safety inspections is primarily that of the train crew. The agent has no responsibility for maintenance or safety inspection of equipment beyond that shared by all Railroad employees.

16. During 1988, Crookston and its assigned blind sidings forwarded 14,656 railroad cars, received 3,366 Railroad cars and interchanged 107 cars, a

total of 18,129 cars. It averaged a total of 1,510.7 cars handled per month and 72.52 cars forwarded, received and interchanged per day. BN Ex. M, p. 5. In 1989, it forwarded 13,788 cars, received 3,607 cars and interchanged 769 cars, a total of 18,164 cars forwarded, received and interchanged. The average number of cars handled per month in 1989 was 1,513.67 and 72.37 cars were handled per day on average. BN Ex. M, p. 5. Between January and September of 1990, 10,625 cars were forwarded, 2,153 cars were received and 548 cars were interchanged, a total of 13,326 cars forwarded, received and interchanged. BN Ex. M, p. 5. The average number of cars forwarded, received and interchanged per month and per day between January and September of 1990 was 1,480.67 and 72.03, respectively. BN Ex. M, p. 5.

17. A significant proportion of the Railroad traffic at the Crookston station and its assigned blind sidings consists of multi-car shipments and unit trains exceeding 25 cars. see, BN Ex. M, p. 19. The prevalence of multi-car shipments, particularly unit trains, reduces the amount of clerical work required and the need for the physical presence of an agent.

18. In 1988, Crookston and its blind sidings accounted for freight revenues of \$3,433,197 and other freight service revenues of \$47,900. Fifty percent of the freight revenues were assigned to Crookston. Hence, in 1988, the station and its blind sidings had assignable total revenues of \$1,764,499. BN Ex. M, p. 50, The station had direct station expenses In 1988 of \$11,831, wages and fringe benefits of \$192,819 and expenses incurred in handling traffic beyond the station of \$1,479,885. BN Ex. M, p. 50. The total expenses associated with Crookston and its blind sidings in 1988 were \$1,684,535. BN Ex. M, p. 50. The net gain associated with the operation of the Crookston central agency in 1988 was \$79,964. BN Ex. M, p. 50. In 1989, Crookston accounted for freight revenues of \$2,042,205 and other freight service revenues of \$19,864. Assigning 50% of the freight revenues to Crookston resulted in total assignable revenues in 1989 of \$1,040,967. BN Ex. M, p. 50. In 1989, direct station expenses were \$11,089 and wages and benefits were \$189,883, for total station expenses of \$200,972. The expense incurred in handling traffic beyond the station in 1989 was \$870,352, for total expenses of \$1,071,324. During 1989, the Crookston station operated at a net loss of \$30,357. BN Ex. M, p. 50. Between January and September of 1990, the Crookston station accounted for \$1,800,572 in freight revenues and \$30,820 in other freight service revenues. Assigning 50% of the freight revenue to Crookston resulted in total assignable revenues during that period of \$931,106. BN Ex. M, p. 50. The direct station expenses for that period in 1990 were \$7,954 and the total of wages and fringe benefits was \$142,312, a total of \$150,266 in station expenses. The expense incurred in handling traffic beyond the station was \$778,498. The total expenses associated with the Crookston traffic between January and September of 1990 was \$928,763. BN Ex. M, p. 50. Between January and September of 1990, operation of the Crookston agency service resulted in a net gain to the Railroad of \$2,343. BN Ex. M, p. 50. A breakdown of revenues by central agency and blind siding location is contained in BN Ex. M, pp. 21 - 47.

19. During 1989, a unit time factor analysis was applied to the operations of the Crookston station to determine the amount of time actually spent by

Crookston agency employees in conducting Railroad business. The unit time factors were developed from weekly time studies conducted at various station locations. The weighted average unit time factors developed by the Railroad have been accepted by the Board in a number of BN station proceedings. The study concluded that the total time required for agency work during 1989 was 2,546 hours and the time required for travel was 302 hours. Dividing the productive time work, 2,848 hours, by the total straight time worked by the four employees, 8,032 hours, resulted in each employee spending 47% of their working time productively engaged. Fifty-three percent of the time of each employee would have been available for other work. BN Ex. M, p. 20.

20. The BN centralized agency at Grand Forks is located 27 miles west of Crookston. The agency is staffed 24 hours a day, seven days a week, by Railroad employees. The Grand Forks agency currently has 38 employees, 25 regular positions, four relief positions and nine extra shift positions. As stated in Finding 10, supra, the information generated by shippers in the Crookston area is maintained in the Grand Forks computer terminal. The car supply and trains servicing Crookston originate at Grand Forks, except for one local crew. All demurrage calculations and data entry functions are performed in Grand Forks. The Grand Forks agency has four fulltime traveling agent positions to provide in-person service to shippers. Currently, only three of the positions are filled. If the Petition is granted, two additional employees will be hired at the Grand Forks station, a fulltime station agent and a traveling agent. The

primary responsibility of the additional traveling agent will be to make contacts with shippers in the area currently serviced by the Crookston agency.

That traveling agent could, however, have other duties in addition to servicing the Minnesota customers of the Railroad. The first priority of that traveling agent would still be to provide in-person assistance to Minnesota shippers in the Crookston area.

21. Under the Petition, the Railroad would install toll-free telephone lines for use by Minnesota shippers in contacting the Grand Forks terminal.

22. In 1988, an effort was made to contact all 116 shippers who had used the Crookston agency and its blind sidings recently. All customers were interviewed in face-to-face visits by Railroad employees. During those visits, the proposal to shift agency service from Crookston to Grand Forks and Dilworth was discussed. Ninety-one customers signed statements of approval after face-to-face visits. Fifteen customers were not available for interviews. The Railroad sent descriptive letters to those shippers. No specific objections from Railroad customers were received in 1988. see, BN Ex. D, BN Ex. E. In 1990, immediately prior to the filing of BN's Petition, all shippers and customers were again contacted. A list of the Railroad customers contacted in 1990 is contained in BN Ex. B. Personal meetings were held by BN employees and the transfer and its impact on shipper service were described. No customer interviewed stated any opposition to the transfer.

23. Carl Mattson manages a grain elevator in Elred, Minnesota. The grain elevator is satisfied with the service currently received from the Crookston station. Mr. Mattson would not oppose the Petition if he receives from the Grand Forks station the same level of service he currently receives from the Crookston station.

24. Terra International manufactures liquid fertilizer in Crookston, Minnesota. Terra International requires cars moved on short notice. Moreover, the liquid fertilizer is a hazardous material which must be placarded. A grant of the Petition, however, would not result in the local train crew being moved

to Grand Forks. Terra International would continue to receive the same level of service from the local train crew if the Petition were granted. The local agents in Crookston have no responsibility for placarding cars carrying hazardous materials. That is the responsibility of the shipper with a check by the train crew.

25. American Crystal Sugar Company operates a sugar refining plant in Crookston, Minnesota. It refines and processes sugar from the Red River Valley. American Crystal Sugar has significant communications with the Crookston agency regarding car ordering and car spotting. It usually requires the spotting of at least 20 cars per day. It currently calls Crookston for interaction with the local train crew. American Crystal Sugar is concerned that it continue to receive the same level of service it currently receives. As stated in Finding 24, supra, however, a grant of the Petition would not remove the services of the local train crew. Moreover, currently, all of American Crystal Sugar's contacts with the Crookston agency must be relayed to Grand Forks. The effect of a grant of the Petition on American Crystal Sugar would be to avoid relaying communications from the Crookston agency to the Grand Forks agency.

26. The Railroad will make available to shippers in Minnesota a toll-free number to contact the Grand Forks agency. The Railroad has formulated a method

for shippers who must make frequent use of the local train crew to interact with that crew. as they do now, without agency service being provided in Crookston.

27. Dahlgren & Company operates a sunflower seed processing plant in Crookston. The Company ceased shipping sunflower seeds by railroad from Lisbon, North Dakota when its only contact with the serving railroad, not BN, was through a North Dakota traveling agent. The company found that the traveling agent was always on the road and they only received a recording when they attempted to contact the railroad. In that case, however, Dahlgren & Company did not have the services of a dedicated central agency or even a traveling agent whose primary responsibility was the geographic area where the plant was located. All agency functions were performed by a traveling agent. If the Petition is granted, the agency function will be performed by the central agency in Grand Forks which provides service 24 hours per day, seven days a week. A traveling agent whose primary responsibility will be the Crookston area is also to be employed at the Grand Forks station.

28. Eric Larson operates a grain elevator at Shelly, Minnesota, 30 miles south of Crookston on Highway 75. Mr. Larson believes that the service provided by the Crookston agency has been good and he desires to maintain that level of service. Mr. Larson's current contact with the Crookston station however, is by telephone, as it would be with Grand Forks. If the level of service received at the Shelly grain elevator does not diminish, Mr. Larson would not oppose the Petition.

29. The Crookston Development Authority is a public corporation formed to foster economic development in the Crookston area. The Crookston Development Authority was not contacted by the Railroad in 1988 or 1990, prior to its filing of the Petition. The oversight occurred, apparently, because the Development Authority was not, itself, a Railroad customer. The Development Authority is concerned about the following: loss of employment in the Crookston area; a deterioration of public railroad service; and a threat to the federal funding of its historic district if the depot building is wrecked and removed.

30. A grant of the Petition would not result in a loss of revenue to the City of Crookston. It is likely that the incumbent employees who live in Crookston will be employed either at Dilworth or Grand Forks. There is no indication that those employees will move from the Crookston area because of the commuting time required.

31. There is no evidence in the record that the level of service to be provided in the Crookston area through a centralized agency service from Grand Forks will, necessarily, result in a deterioration of railroad service in the Crookston area.

32. The federal government has not threatened to remove the tax credits that Crookston has received for its historic district. The Railroad is willing

to maintain the depot for a period of at least a year so that it can be acquired
by the Development Authority or another party in the Crookston area for preservation.

PERTINENT STATUTORY EXCERPTS

Minn. Stat. 219.85 (1990), in relevant part, provides:

Agency service at common carrier railroad stations must be that required by the public convenience and necessity. No station may be abandoned nor agency service reduced, discontinued, established, reestablished, or expanded without the approval of the board after public notice and opportunity for hearing is afforded. The board shall consider if submitted, whether the abandonment or reduction will not substantially reduce the level of safety, health, or welfare of the railroad's customers, its employees, or the public.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The subject matter of the Petition is within the jurisdiction of the Transportation Regulation Board and the matter is properly before the Administrative Law Judge pursuant to adequate notice. All other requirements of law or rule have been fulfilled.

2. A grant of the Petition will not adversely affect the public convenience and necessity and will not substantially reduce the level of safety, health or welfare of the Railroad's customers, its employees or the public if the following conditions are observed by Burlington Northern:

a. The railroad provides toll-free telephone service at its Grand Forks, North Dakota centralized agency station for Minnesota shippers currently serviced by the 51 stations within the Petition whose agency service is to be transferred to Grand Forks, North Dakota and provides a similar toll-free telephone service at its Dilworth central agency for shippers currently serviced by the following stations: Perley; Georgetown; Kragness; Felton; Averill; and

b. The railroad provides to the 51 stations stated in the Petition who will receive base agency service from Grand Forks, North Dakota, a traveling employee of the Petitioner whose primary responsibility is to perform such services on site for shippers concerned as is necessary to satisfy their railroad shipping needs.

3. Since the Railroad will have no substantial further use for the depot building at Crookston, Minnesota, and since the building may be of historical significance, it would be appropriate for Burlington Northern to negotiate for a reasonable period of time with city officials and community groups for the transfer of the depot building to a different owner to preserve the building for historical purposes.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE
TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY
ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

By reason of the foregoing, the Administrative Law Judge recommends to the Transportation Regulation Board that it enter the following:

ORDER

IT IS HEREBY ORDERED that the Petition of the Burlington Northern Railroad (Railroad) for authority to terminate base agency service at Crookston, Minnesota and to service the shippers in the area currently serviced by the Crookston, Minnesota base agency station through the centralized base agency station in Grand Forks, North Dakota and, with respect to the towns of Perley, Georgetown, Kragness, Felton and Averill through the base agency station at Dilworth, Minnesota is GRANTED;

IT IS FURTHER ORDERED that the Petitioner shall not reduce the quality of agency service afforded to the patrons in the area affected by the grant of this Petition in comparison to the service afforded to them in the past; and, specifically, the Railroad shall:

a. make available to shippers currently serviced by the base agency station at Crookston, Minnesota toll-free calling to the Grand Forks, North Dakota base agency station, except for the stations of Perley, Georgetown, Kragness, Felton and Averill. With respect to those stations, the Railroad shall make available to shippers currently serviced by those stations toll-free calling to the Dilworth, Minnesota centralized agency. All such toll-free calling shall be available for shipping transactions originating or terminating in the area currently served by the Crookston centralized agency; and

b. provide to the area currently served by the Crookston base agency station a traveling representative of the Railroad who will provide direct services to shippers in the area currently served by the Crookston base agency station as such services shall be reasonably necessary. For all stations other than the towns of Perley, Georgetown, Kragness, Felton and Averill, the traveling representative shall be maintained by the Railroad at its Grand Forks, North Dakota base agency station. The primary responsibility of that traveling agent shall be to provide in-person services to the area currently serviced by the Crookston base agency station except the stations of Perley, Georgetown, Kragness, Felton and Averill. With respect to the stations of Perley, Georgetown, Kragness, Felton and Averill, the Railroad shall make available a traveling agent located at the Dilworth, Minnesota base agency station to provide in-person service to customers currently serviced by the five stations enumerated as such in-person services may

be reasonably necessary.

IT IS FURTHER ORDERED that the Burlington Northern Railroad shall negotiate for a period of at least one year with governmental units, community service organizations and nonprofit corporations in the area affected for the transfer to such an entity of the current depot building in Crookston, Minnesota, and during the period of such negotiations, it shall not wreck or remove or otherwise alter the existing agency building in Crookston, Minnesota and,

IT IS FURTHER ORDERED that the Railroad shall post a bulletin on the Crookston, Minnesota depot describing, in detail, the manner in which rail service can be obtained thereat.

Dated this 27th day of February, 1991.

BRUCE D. CAMPBELL Administrative Law

Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded.

MEMORANDUM

The Burlington Northern Railroad is required to provide only that agency service which is required by the public convenience and necessity. In re Burlington Northern Railroad Company, 359 N.W.2d 288 (Minn. App. 1984); In re Burlington Northern Railway Co., C2-89-2179 (Minn. App. 1990) (unpublished opinion). In a series of cases, the Minnesota Supreme Court has determined the maintenance of agency service must be supported not only by convenience but also by some showing of necessity equated with a public need. Railroad and Warehouse Commission v. Minneapolis & St. Louis Railroad CO., 209 Minn. 564, 570-71, 297 N.W. 189 (1941); State ex rel. City of Duluth v. Duluth-St.-Railway Co., 179 Minn. 548, 229 N.W. 883 (1930). See also, Monson Dray Line v. Murphy Motor Freight Lines, 259 Minn. 382, 107 N.W.2d 850 (1961).

In 1990, Minn. Stat. 219.85 was amended to include the following language:

The Board shall consider, if submitted, whether the abandonment or reduction will not substantially reduce the level of safety, health, or welfare of the Railroad's customers, its employees, or the public.

Although the Minnesota courts have not interpreted the amendment to Minn. Stat.

219.85 (1990), the Administrative Law Judge concludes that the amendment is merely a statement of the factors the Board must consider in determining whether the public convenience and necessity requires the maintenance of a particular agency station service. If the termination of the agency service would have a substantial adverse impact on the safety, health or welfare of shippers, Railroad employees or the public, then the public convenience and

necessity would require the maintenance of the agency service sought to be abandoned.

As noted by the court in *Petition of American Freight Systems Inc.* 380 N.W.2d 192, 196-97 (Minn. App. 1986), the term "convenience and necessity" is an elastic one for which no definite rule can be stated that will apply to all cases. Each determination must stand on its own facts with the decisional authority given some latitude in applying the test.

In this case, the Administrative Law Judge concludes that service to shippers using the Crookston base agency station will not deteriorate as a result of a grant of the Petition. Currently, the Crookston station merely acts as a relay point for requests ultimately transferred to the Grand Forks centralized agency. No service is provided to shippers from the Crookston station which cannot be provided equally, and perhaps more satisfactorily, from the Grand Forks, North Dakota centralized agency, 27 miles away. The number of cars available to shippers, the speed of ordering cars, the frequency of trains, and the billing of charges will not be affected by a grant of the Petition. The local train crew which services some shippers in the Crookston area will not be affected by the transfer of the agency function to the Grand Forks station. Maintenance of the local train crew is not a function of maintaining a centralized agency in Crookston but of the need for the service arising from the business of the shippers. Shippers at the five stations proposed to be transferred to the Dilworth centralized agency will also receive more efficient service as a result of the grant of the Petition. As noted in Finding 5, *supra*, the current mix of functions between Crookston and Dilworth stations results in inefficient services to shippers in the five towns previously noted. Moreover, the towns of Perley, Georgetown, Kragness, Felton and Averill are geographically closer to Dilworth than Crookston.

The Administrative Law Judge understands that, at times, in-person contact with an agent will be required. The Railroad will make available to both the Crookston area and the five stations transferred to Dilworth a traveling agent who will be available when that employee's physical presence is required to transact Railroad business.

The shippers who testified about the Petition were concerned that the level of service they currently received may deteriorate. The record of this proceeding demonstrates that, if anything, service to shippers will improve as a result of a grant of the Petition.

There is no evidence in the record that the health, safety or welfare of

the public generally would be adversely affected by a grant of the Petition.

It could be argued that the welfare of Railroad employees will be adversely affected by eliminating the four positions available in Crookston and requiring those employees to bid in on jobs at other locations. The Administrative Law Judge does not interpret the recent amendment to the statute to prohibit a station closing whenever some realignment of employee positions is involved. At most, it is a factor which the Board should consider in determining the requirements of the public convenience and necessity. In this case, two new positions will be created in Grand Forks. That central agency is only 27 miles from Crookston. The current employees at the Crookston station who do not retire have sufficient seniority to bid in on existing positions at the Grand Forks and Dilworth stations. Hence, the Administrative Law Judge does not conclude that the realignment of employee positions that would result from a grant of the Petition is a sufficient reason to find that the public convenience and necessity requires the maintenance of the Crookston agency

service when that station functions only as an antiquated relay point for a second, more modern centralized agency station only 27 miles distant.

The Administrative Law Judge recognizes that, except for 1989, the centralized agency at Crookston has generated profits for the Railroad. This is, however, because of the activity at the blind sidings which are handled by a remote location. There is no evidence in the record that the level of service would be adversely affected by making that remote location Grand Forks, North Dakota, rather than Crookston, Minnesota. The existence of net profit from a station is not, in itself, a sufficient reason to require the maintenance of that station if it serves no function and its removal would not have a significant negative impact on shippers, the public or Railroad employees. In the Matter of the Application of the Canadian National Railway Company and Manitoba and Minnesota-Railroad Company to Modify the Means of Providing Agency Service at Baudette Minnesota D-4880a; R-3984; TRB 85-015-BC, Findings of Fact, Conclusion and Recommended Order, November 1, 1984, adopted As modified, December 5, 1984.

The Development Authority in Crookston had not been consulted prior to the filing of the Petition. This probably resulted from the fact that the Authority is not itself a shipper and would not appear as a customer in Railroad records. The Development Authority is primarily concerned about the maintenance of the physical station building. They fear that there may be some threat to the historic district and attendant federal public funds. The Railroad stated on the record that it had no objection to negotiating with the Authority or other local Crookston agencies or entities for a period of at least one year prior to any demolition of the station building. The Board has recognized that such a concern is legitimate and should be reflected in its Order when a historic agency railroad building is involved. In the Matter of the Application of the Canadian National Railway and Manitoba and Minnesota Railroad Company to Modify the Means of Providing Agency Service at Baudette, Minnesota D-4880a; R-3984; TRB 85-015-BC, Findings of Fact Conclusions and Recommended Order. November 1, 1984, adopted as modified, December 5, 1984. The Administrative Law Judge recommends to the Board that the Railroad be prevented for a period of one year from wrecking or removing the agency building and that it be required to negotiate for the transfer of the building with the Crookston Development Authority or other local entities concerned with maintaining the historic structure.

The Transportation Communications International Union asserts that any requirement to provide the services of a traveling agent for local personal contact should be reflected in the Board's Order. Apparently, a disagreement on another case had occurred between the Railroad and that employee union about the necessity to maintain the services of a traveling agent. The Burlington Northern took the position that since the Board's Order did not contain a requirement for such a position it had no responsibility to provide that service, even though it had agreed to do so at the hearing on the matter. In this case, part of the reason that the public convenience and necessity does not require the presence of an agent at Crookston is the Railroad's willingness to add a traveling agent position at the Grand Forks station to service the Crookston area. To avoid the misunderstanding that developed in the previous case, if the Board authorizes the Railroad to cease agency service at Crookston, it should include in its Order a requirement that the Burlington Northern provide a traveling agent at the Grand Forks station whose primary area of responsibility will be the 51 Minnesota stations transferred to Grand Forks. It should also require in its Order, to avoid the same difficulty, a

requirement that a traveling agent service the stations of Perley ,
Georgetown ,
Kragness, Felton and Averill from the Dilworth central agency. If the need
for
such traveling agents changes, the Railroad can seek an amendment of the
Board's Order.

B.D.C.